September, 1965, his services were terminated by the plaintiffs, and the plaintiffs gave notice to the defendant to hand over the bungalow and vacate the same.

In this application made by way of motion the plaintiffs ask for an order that the defendant and all persons holding through or under him may be restrained until the trial of this action from remaining in or upon the said bungalow.

The ground for such an application is that the continued occupation by the defendant of the said bungalow is causing irreparable inconvenience and damage to the plaintiffs, preventing them from installing another employee in the bungalow, and that meanwhile the defendant is utilising the furnishings and fittings in the bungalow belonging to the plaintiffs, and that this situation would continue unless the defendant is ordered to vacate the bungalow.

Counsel for the plaintiffs cited several authorities in support of the proposition that where the occupation of premises by a person is as a servant of the owner for the more effective performance of his duties as such servant and that person is dismissed from his employment, he has no right to continue to occupy the premises, and that an injunction would be granted to prevent him from so doing even though he may have an action for wrongful dismissal. (See *Janisse* v. *Livesey* [1]; *Collison* v. *Warren* [2]; *Canadian Pacific Railway* v. *Gaud & Ors.* [3]; *Thomson* v. *Park* [4]; *Kamuning (Perak) Rubber & Tin Co. Ltd.* v. *Abraham.* [5]

In his affidavit in reply, the defendant stated that the termination of his services did not conform with the procedure agreed to under the agreement of procedures for dealing with disputes, inefficiency and redundancy dated the 27th day of April, 1965 between the All Malayan Estates Staff Union (hereinafter called the said union) and the Malayan Planting Industries Employers Association (hereinafter called the said association). He stated that the dispute between the said union and the said association arising out of the circumstances of the alleged termination of his services had then been referred to the industrial court under section 4 of the Industrial Courts Ordinance, 1948, in accordance with the agreement relating to disputes on interpretation entered into between the said union and the said association dated the 27th day of April, 1965. He then said that the action against him was premature since the matter of his dismissal was before the industrial court. He further alleged that his continued occupation of the bungalow was not unlawful until the issue of his dismissal had been decided by the industrial court.

In my view, this is not an answer to the plaintiff's claim for the interlocutory relief. It is clear from the authorities cited that where a workman is dismissed he is not entitled to remain in possession of a house which he occupied by reason of his work. Even if it is decided in the end that his dismissal is wrongful, this being a contract for personal service, the court will not enforce specific performance of the contract to employ him. The defendant would then be entitled to damages which would include compensation for the loss of the use of the bungalow which he would have retained, if his employers had not broken their contract. In this case, the plaintiffs are prepared to give an undertaking as to such damages. In my opinion, this is a case where the plaintiffs should be granted the interlocutory relief asked for.

There will be an order in terms of the motion and costs.

Order in terms.

Solicitor: *Shearn, Delamore & Co.; P. G. Lim.*

TAY BOO JIANG v. CHAN YIP TONG

[O.C.J. (Winslow J.) August 27, 1966]

[Singapore — Suit No. 843 of 1964]

Tort — False imprisonment — Malicious prosecution — Arrest by police — Sanction to prosecute given by Attorney-General.

The plaintiff claimed damages for false imprisonment and malicious prosecution. The allegation was that as a result of a report to the police made by the defendant the plaintiff was arrested and detained by the police. Further the defendant had made a complaint to a magistrate that the plaintiff had given false evidence in a civil case and the defendant was charged with perjury, sanction for the prosecution having been given by the Attorney-General.

Held: (1) the defendant in this case did not authorise the arrest of the plaintiff nor did he make any charge on which it became the duty of the police to act. The police acted on their own initiative in arresting the defendant and on the facts of the case their action was lawful;

(2) the defendant was not prompted by malice in making his complaint to the magistrate and as the Attorney-General had granted a sanction for the prosecution of the defendant there could not be said to be an absence of reasonable and probable cause on the part of the defendant in setting the law in motion.

Cases referred to:—

(1) *Tan Kay Teck & Anor.* v. *Attorney-General* [1957] M.L.J. 237.

(2) *Bradshaw* v. *Waterlow and Sons Ltd.* [1915] 3 K.B. 527.

CIVIL SUIT.

C. F. J. Ess for the plaintiff.

L. A. J. Smith (*V. K. S. Narayanan* with him) for the defendant.

Cur. Adv. Vult.

Winslow J.: The plaintiff in this action claims damages in respect of —

(1) false imprisonment as a result of a report made by the defendant to the police on 4th January, 1964 that the plaintiff had threatened him over the telephone. This led to his arrest and detention by the police at the Central Police Station between 10 a.m. and 1 p.m. on 7th January, 1964;

(2) malicious prosecution in respect of 2 charges of perjury arising out of a complaint made by the defendant to the fourth magistrate on 6th January, 1964 alleging that the plaintiff had given false evidence in the High Court in Civil Suit No. 542 of 1962.

After careful consideration of the evidence and of the many authorities cited on the law relating to these two matters I have decided as follows:—

(1) The defendant did not authorise the arrest of the plaintiff nor did he make any charge on which it became the duty of the police to act. The police acted on their own initiative in effecting the arrest 3 days later, presumably on the ground contained in section 31(1)(a) of the Criminal Procedure Code, (Cap. 132) which entitles a police officer to arrest without a warrant any person against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned in any seizable offence. In making the arrest the police must be taken to have been so satisfied although eventually, after further investigation, a decision was taken by the deputy public prosecutor not to prosecute the defendant. In the circumstances I cannot see how the defendant can be held liable for directing a wrongful arrest. I find that the defendant had just cause and excuse for making his report and that he did not act maliciously or make a false report. He was genuinely frightened and nervous after receiving the telephone call in question and passed on his fears in an information to the police on which they took independent action. It should be noted that the plaintiff does not challenge the legality of the police action in making the arrest as the plaintiff did in the case of *Tan Kay Teck & Anor.* v. *The Attorney-General.*[1] The action taken by the police in the present suit was, in my opinion, lawful.

(2) With regard to the claim for malicious prosecution I find that the defendant was not prompted by malice against the plaintiff in making his complaint to the fourth magistrate on 6th January, 1964 despite the long-standing feud between them. His predominant desire was to vindicate the law and he honestly believed in the guilt of the plaintiff. Moreover, the Attorney-General granted a sanction for the prosecution of the plaintiff and on the authority of *Bradshaw* v. *Waterlow & Sons, Ltd.*[2] there cannot be an absence of reasonable and probable cause in such circumstances. Even if the sanction of the Attorney-General had not been required for a prosecution such as this I would still hold that on the facts of this particular case the plaintiff has not shown absence of reasonable and probable cause on the part of the defendant in setting the law in motion.

The plaintiff's claim is accordingly dismissed with costs.

Claim dismissed.

Solicitors: *R. C. H. Lim & Co.; L. A. J. Smith.*

NG HOONG KEE v. PUBLIC PROSECUTOR

[F.C. (Barakbah L.P., Azmi C.J. (Malaya) and Raja Azlan Shah J.) August 29, 1966]

[K.L. — Federal Court Criminal Appeal No. X24 of 1966]

Penal Code, s. 436 — Mischief by fire — Necessity to prove intention — Evidence circumstantial only.

This was an appeal against the conviction of the appellant on a charge of causing mischief by intending to cause the destruction by fire of a house. The prosecution case was that the appellant caused the fire and his intention was to destroy certain papers and accounts of an association of which he was the secretary and his motive was to get rid of evidence that might be used against him.

Held: there was insufficient evidence on which the learned judge could have come to the conclusion beyond reasonable doubt that it was the appellant who started the fire to destroy the building and therefore the conviction must be set aside.

Case referred to:—

(1) *Kartar Singh & Anor.* v. *R.* [1952] M.L.J. 85.

FEDERAL COURT.

Appellant in person.

Ajaib Singh (Deputy Public Prosecutor) for the respondent.

Azmi C.J. (Malaya) (delivering oral judgment): The appellant was charged with causing mischief by intending to cause destruction by fire of house No. 24 Jalan Siew Nam, Johore Bahru, an offence punishable under section 436 of the Penal Code.

It is pertinent to note at this stage that one of the essential things the prosecution must prove to sustain a conviction against the appellant under this section, is that there was intention on the part of the appellant to cause the destruction of the house or that he knew it to be likely that he would thereby cause such destruction.

The facts for the prosecution may be summarised as follows. The appellant was employed as secretary to the Kwong Siew Wai Kuan Association and according to the treasurer and president of the association, the appellant had failed to give account of some money that he as